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his own negligence. *Poulon v. Canadian Pacific Ry Co.*, *supra*; *Hall v. Memphis & C. R. Co.*, 15 Fed. 57; Note 43 L. R. A. 706; in this regard the principal case seems to be a departure.

CONSTITUTIONAL LAW—ELEVENTH AMENDMENT—JURISDICTION OF FEDERAL CIRCUIT COURT—PENALTY FOR DISOBEDIING RATE LEGISLATION.—In a suit in a Federal Circuit Court, brought by one of the stockholders against the Northern Pacific R. R., and one Young, as Attorney General of Minnesota, to restrain the railroad from complying with a statute of Minnesota establishing freight rates, which statute provided that non-compliance with the law is a crime punishable with a very severe penalty, the court granted the injunction, and also restrained Young, as Attorney General of the State of Minnesota, from taking any steps against the railroad to enforce the remedies or penalties of the rate law, or to compel obedience to that act, or compliance therewith, or any part thereof. The Attorney General, having, in violation of such injunction, obtained, in the state court, an alternative writ of mandamus commanding the railroad to publish a schedule of rates as provided by law, was adjudged in contempt of court, and fined \$100. He petitioned for a writ of habeas corpus to secure his release from custody, and for a writ of certiorari to test the validity of the proceedings, on the ground that the Circuit Court of the United States was without jurisdiction. The court dismissed the petition, and held, (1) that the rate law of Minnesota is unconstitutional, as depriving the corporation of the equal protection of the law; (2) that the suit was not a suit against a state in violation of the eleventh amendment to the United States Constitution. (Mr. Justice HARLAN, dissents). *Ex parte Edward T. Young, Petitioner* (1908), 28 Sup. Ct. Rep. 441.

The purpose of the eleventh amendment was to provide "that states should not be subjected against their will to pecuniary obligations which might be enforced by a mandamus or injunction that would withdraw money from the treasury without the consent of the legislature, or hinder the operations of the government, as a political and sovereign power." HARE'S AMER. CONST. LAW, Vol. 2, 1055. The first case on the subject, which declared that "the eleventh amendment is, of necessity, limited to those suits in which a state is a party on the record," has been considerably modified by later decisions. *Osborn v. Bank*, 9 Wheat. 738; *Davis v. Gray*, 16 Wall. 203. The question is now said to be one of fact, is or is not the suit in substance, though not in form, a suit by a citizen of another state against a state? PATTERSON, THE U. S. AND STATES UNDER THE CONST. 2nd ed. 260. The real difficulty, however, lies in determining when the suit is in reality and substance against the state. The court said, in *Cunningham v. R. R.*, 109 U. S. 446, that although the state was not nominally a party, yet as it clearly appeared that the state was so interested in the property that final relief could not be granted without making it a party, the court was without jurisdiction. A suit against an officer of a state to compel performance of contracts is, in effect, a suit against a state. *McGahey v. Virginia*, 135 U. S.

662. Likewise, a suit against an officer to restrain him from doing acts required of him by law, or to restrain him from enforcing a valid law of the state, is a suit against the state. *Fitts v. McGhee*, 172 U. S. 516. On the other hand, a suit to compel an officer to do what the statute requires him to do, and to restrain him from doing something else, is not a suit against a state. *Rolston v. Missouri Fund Com'r's*, 120 U. S. 390. Also a suit to recover property wrongfully detained by an officer of the state is not a suit against the state. *Tindal v. Wesley*, 167 U. S. 204. And "when a suit is brought against defendants who claim to act as officers of a state and, under color of an unconstitutional statute, commit acts of wrong and injury to the property of the plaintiff, to recover money or property in their hands unlawfully taken by them in behalf of the state, or, in a proper case, for an injunction to prevent such wrong and injury; or, for a mandamus in a like case to enforce the performance of a plain legal duty, purely ministerial; such suit is not, within the meaning of the amendment, an action against the state." "The circuit courts of the United States will restrain a state officer from executing an unconstitutional statute of the state, when to execute it would be to violate rights and privileges of the complainant that had been guaranteed by the constitution and would do irreparable damage and injury to him." *In re Tyler*, 149 U. S. 164; *Pennoyer v. McConaughy*, 140 U. S. 1; *Board of Liquidation v. McComb*, 92 U. S. 531; COOLEY CONST. LAW, 7th ed. 136; HARVE'S CONST. LAW, Vol. 2, 1064. Where an officer acts under an unconstitutional law "he stands stripped of his official character; and, confessing a personal violation of the plaintiff's rights, for which he must personally answer, he is without defense." *Poindexter v. Greenhow*, 114 U. S. 270. In *Smyth v. Ames*, 169 U. S. 466, the court declared "that a suit against individuals for the purpose of preventing them as officers of a state from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the state within the meaning of that amendment." See, 6 MICH. LAW REV., 86. The court, in the principal case, concludes that the attorney general "in proceeding under such enactment, comes into conflict with the superior authority of that constitution, and he is in that case stripped of his official or representative character, and is subjected in his person to the consequence of his individual conduct." The court, also, says that "an injunction to prevent him from doing that which he has no legal right to do is not an interference with the discretion of an officer." While the decision of the case is probably in harmony with the prior holdings of the court, yet the result of the decision is that it not only prevents the enforcement of an invalid law, but permits the Federal Court to restrain a state attorney general from bringing suit in his state court; and instead of compelling the defendant to rely upon the invalidity of the law as a defense, it permits him to prevent the institution of a suit in the state court.

CONSTITUTIONAL LAW—STATE TAXATION—PROPERTY IN TRANSIT.—The plaintiff, in error, sought to enjoin the state oil inspector from inspecting and taxing certain oils shipped by the plaintiff, in error, from Pennsylvania